

DIVISION III

CA06-516

January 17, 2007

DEXTER GARY

APPELLANT

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F311695]

V.

MAVERICK TRANSPORTATION, INC.
APPELLEE

REVERSED AND REMANDED

JOHN MAUZY PITTMAN, Chief Judge

The appellant in this workers' compensation case was employed by appellee Maverick Transportation as a truck driver. He sustained an admittedly compensable back injury in October 2003 while bending beneath the trailer to attach an anti-theft device. Appellant suffered severe persistent low back pain, an inability to straighten his back due to pain, and an inability to walk any meaningful distance without the aid of a cane. He filed a claim for workers' compensation benefits alleging that he was permanently and totally disabled or, in the alternative, entitled to wage-loss disability benefits over and above the admitted six percent anatomical impairment attributed to his injury of October 2003. In addition, appellant alleged that, because he previously sustained a ratable back injury while working for a different employer that resulted in cervical fusion and lumbar herniation, Second Injury Fund liability needed to be determined. After a hearing, the Arkansas Workers'

Compensation Commission found that appellant was able to continue working as a truck driver and that the Second Injury Fund bore no liability. Appellant was awarded wage-loss disability in the amount of twelve percent over and above his anatomical impairment of six percent. On appeal, appellant argues that the Commission's findings are contradictory and unsupported by the evidence. We agree, and we reverse and remand.

The evidence adduced shows that appellant's job duties consisted of driving a semi-tractor hauling a flatbed loaded with steel. In addition, it was appellant's responsibility to supervise the loading of the flatbed, to secure the load, and to cover the load with several tarpaulins weighing as much as 130 pounds each. In addition, appellant was required to connect and disconnect the trailer from the tractor, including lowering the trailer's landing gear by means of a crank requiring both hands to turn.

There was also evidence that, in 1986, appellant suffered a severe compensable injury to his spine after falling eighteen feet. This resulted in cervical injury requiring fusion, and injury to the lumbar spine. Appellant underwent two years of medical treatment, during which time he was diagnosed with degenerative changes to his lumbar spine, resulting in a warning from his physician that he might continue to have degenerative problems in the future. Appellant was assigned a ten percent impairment rating to his neck and a ten percent impairment to his back, and was released with restrictions to perform only sedentary work with a lifting limit of ten pounds or less. Despite these restrictions, appellant secured work

as a truck driver and was able to continue this work until the injury in October 2003 that is the subject of this claim.

The evidence presented at the hearing depicts appellant as being in severe pain requiring daily administrations of morphine and other powerful pain medications, incapable of anything but occasional light exertion, and unable to remain on his feet long enough to shop without using the motorized carts provided for the handicapped. There was evidence that appellant was terminated by appellee for inability to return to work and not offered any light-duty employment. Nevertheless, the Commission found that appellant is capable of returning to truck driving, an occupation that it classes as “light to sedentary work.” No explanation for this finding is offered except that “there is no probative evidence before the Commission to suggest the claimant is unable to return to his prior work.”

We must reverse because the Commission’s opinion is so utterly inadequate as to preclude any meaningful review. The right to find facts carries with it a duty to find facts. At a minimum, the Commission's findings must include a statement of those facts the Commission finds to be established by the evidence in sufficient detail that the truth or falsity of each material allegation may be demonstrated from the findings. *Wright v. American Transportation*, 18 Ark. App. 18, 709 S.W.2d 107 (1986). A general statement of the Commission’s belief that a claimant failed to prove entitlement to benefits does not constitute such a finding as to enable this court to make a meaningful review of the case and a determination of whether the law was properly applied by the Commission. *Id.*

The Commission did not merely fail to make essential findings regarding appellant's physical condition and abilities. It compounded this error by premising its denial of benefits to appellant upon two inconsistent findings of fact going to essential elements of appellant's claim. *Bonner v. McKee Baking Co.*, 29 Ark. App. 1, 776 S.W.2d 364 (1989). In its opinion, the Commission found both that appellant's current back pain and associated symptoms "result from his pre-existing degenerative problems rather than his [new] injury," and that the Second Injury Fund bore no liability because "the new injury alone was producing his current disability status."

The defects in the Commission's opinion make it impossible for us to decide the appeal and cross-appeal in this case. We reverse and remand for the Commission to make new findings of fact and conclusions of law that are internally consistent and sufficiently detailed to permit meaningful review.

Reversed and remanded.

GLADWIN and ROBBINS, JJ., agree.